

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

CITY OF HUNTINGTON, WEST VIRGINIA,
CITY OF CHARLESTON, WEST VIRGINIA,
CITY OF KENOVA, WEST VIRGINIA, and
TOWN OF CEREDO, WEST VIRGINIA,
municipal corporations,

Plaintiffs

v.

EXPRESS SCRIPTS HOLDING COMPANY;
EXPRESS SCRIPTS, INC.; MCLOUD
FAMILY PHARMACY, INC.; T&J
ENTERPRISES, INC.; CONTINUUMCARE
PHARMACY LLC; MEDICAL PARK
PHARMACY LTC, INC.; WEST VIRGINIA
CVS PHARMACY, L.L.C.; MRNB, INC.;
RXBYTEL, INC.; RITE AID OF WEST
VIRGINIA, INC.; KROGER LIMITED
PARTNERSHIP I; SAFE RX PHARMACIES,
INC.; PASTM, INC.; CROSS LANES
FAMILY PHARMACY, INC.; and
BEEWELL PHARMACY, INC.,

Defendants.

Civil Action No. 2:18-cv-00580

Judge David A. Faber

UNOPPOSED MOTION TO STAY THE PROCEEDINGS PENDING RESOLUTION OF
THE CONDITIONAL TRANSFER ORDER

COME NOW Defendants Express Scripts Holding Company and Express Scripts, Inc. (together, “Express Scripts”)¹; West Virginia CVS Pharmacy, L.L.C.; Rite Aid of West Virginia, Inc.; Kroger Limited Partnership I; McCloud Family Pharmacy, Inc.; Medical Park Pharmacy

¹ Express Scripts and Defendants file this unopposed motion without waiver to any argument that this Court lacks personal jurisdiction over any of the parties.

LTC, Inc.; PASTM, Inc.; Beewell Pharmacy, Inc., MRNB, Inc.; Cross Lanes Family Pharmacy, Inc.; and Continuumcare Pharmacy LLC (collectively, “Defendants”), by their respective counsel, respectfully move this Court for a stay of the proceedings, including briefing on Plaintiffs’ Motion to Remand and Defendants’ responses to the Complaint, until full resolution of the Conditional Transfer Order 26 (“CTO-26”) entered by the Judicial Panel on Multidistrict Litigation (“JPML”) for *In Re: National Prescription Opiate Litigation*, MDL No. 2804 on April 25, 2018. (JPML Dkt. No. 1302.) In support of their motion, Defendants state as follows:

1. Plaintiffs filed their Complaint with the Circuit Court of Kanawha County, West Virginia on March 14, 2018.
2. The matter was removed to this Court by Notice of Removal, filed on April 16, 2018. (Dkt. No. 7.)
3. On April 18, 2018, Defendants filed an Unopposed Motion to Extend Time to Respond to Complaint (Dkt. No. 10), which the Court granted on April 19, 2018. (Ct. Order, Dkt. No. 11.) The Court Order extended the deadline to respond to the Complaint to June 14, 2018.
4. On April 18, 2018, Express Scripts filed a Notice of Potential Tag-Along with the JPML pursuant to JPML Rule 7.1(a). (JPML Dkt. No. 1237.)
5. On May 1 and May 3, 2018, Defendants MRNB, Inc.; Cross Lanes Family Pharmacy, Inc.; Medical Park Pharmacy, LTC, Inc.; PASTM, Inc.; McCloud Family Pharmacy Inc.; and Beewell Pharmacy, Inc. (“Local Pharmacy Defendants”) filed their Notices of Opposition to CTO-26. (JPML Dkt. Nos. 1329, 1330, 1387.)
6. On May 16, 2018, the Local Pharmacy Defendants filed their Motions to Vacate CTO-26. (JPML Dkt. Nos. 1496, 1498, 1501.)

7. On May 16, 2018, Plaintiffs filed a Motion to Remand the present case to state court. (Dkt. Nos. 21, 22.)

8. The consolidated responses to the CTO are currently due by June 7, 2018 (JPML Dkt. No. 1389), and Defendants' responses to the Complaint are currently due by June 14, 2018.

9. On May 21, 2018, Defendants and Plaintiffs agreed to stay the proceedings until full resolution of CTO-26 in the interest of judicial economy.

10. No prejudice will result to any party as a result of allowing a stay of the current proceedings, and a stay will further judicial economy and conserve judicial resources.

WHEREFORE Defendants respectfully request that this Court stay the proceedings, including briefing on Plaintiffs' Motion to Remand and Defendants' responses to the Complaint, until full resolution of CTO-26 by the JPML.

Dated: May 22, 2018

Respectfully Submitted,

/s/ Charles R. Bailey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Unopposed Motion to Stay the Proceedings Pending Resolution of the Conditional Transfer Order and [Proposed] Order** were served on the following parties by ECF, email, and/or First Class U.S. Mail on this day, Tuesday, May 22, 2018:

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Other Defendants:

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Dated: May 22 2018

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